Gan Chong Guan Transport Sdn Bhd v Ketua Pengarah Jabatan Pengangkutan Jalan Malaysia & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01-(IM)108 OF 2008
JEFFREY TAN, BALIA YUSOF AND ALIZATUL KHAIR JJCA
25 AUGUST 2011

Civil Procedure — Judicial review — Whether application — Whether proceedings should have been brought by way of judicial review — Rules of the High Court 1980 O 53

Road Traffic — Compensation — Claim for — General and special damages — Quantum of damages — Road Transport Act 1987 s 126

This was an appeal against the decision of the learned judge who had dismissed the appellant's claim against the first to sixth respondents for, inter alia, a declaration/mandatory order that the registration certificate of vehicle bearing number JDW 3301 ('the said vehicle') be rectified to reflect the number of the chassis as appearing on the body of the vehicle, and for general and special damages. The appellant had purchased the said vehicle from Metro Cosmos Express Tours & Transport Sdn Bhd. The fifth respondent who was licensed to conduct examinations and inspections of motor vehicles on behalf of the first and second respondents had inspected JDW 3301 ('the vehicle') on 14 occasions. On each occasion, the remark was either 'lulus' or 'passed'. However on 13 May 2002, the fifth respondent discovered that the chassis number was different from that of the registration certificate. In the court below, the respondent contended that the proceedings should have been brought by way of judicial review. In reply, the appellant argued that judicial review, which was not a part of 'Isu-isu untuk dibicarakan' was not the exclusive procedure. The appellant further contended that remedies for the protection of private rights in both private or public law proceedings. The plaintiff's claims were dismissed on the grounds of non-compliance of O 53 of the Rules of the High Court 1980 ('RHC') and that the chassis of the said vehicle was replaced before to the examination.

Held, allowing the appeal in part:

(1) Only if a dispute had substantive principles of public law was O 53 of the RHC, the appropriate procedure. The claim, which was based on breach of duty and or negligence, was more fact-based than anything else. In the instant case, it was not only against public authorities but was also against

a defendant ('the fifth respondent') who was licensed to examine and inspect the said vehicle on behalf of the first and second respondents, and who was allegedly negligent in the examination and inspection of the said vehicle. There was also another defendant ('the sixth respondent') who was not a public authority. The court was of the view that the dispute was not suitable for judicial review. The prayers for the declaration and the mandatory order should not have been struck out on the ground of non-compliance with O 53 (see para 7).

(2) The entire claim against the first and second respondents was dismissed under s 126(6) of the Road Transport Act 1987 ('Act'). The first and second respondents were not liable to suit for any failure by the fifth respondent to carry out its obligation under the Act. Based on s 126(6) of the Act, the court unanimously dismissed the appeal against the first and the second respondents with costs against the appellant. There was also no case against the third and fourth respondents (see paras 7–9).

(3) The vehicle was imported and all import documentation, namely the invoice, bill of lading and certificate of origin had the number of the chassis as YV2F7A2A0GC880017, which was the number found by DW5 on the mentioned date. All documents had the number of the chassis as YV2F7A2A0GC880017. The number of the chassis when examined on 13 May 2002 tallied with the import documentation was wholly consistent with the fact that the chassis when examined on 13 May 2002 was the same chassis that was imported. The absence of evidence of tampering refuted that the chassis could have been replaced before examination on 13 May 2002. That the number of the chassis was different from the number stated in the certificate of registration was all down to human error (see paraa 13 & 17).

(4) Proper inferences were not drawn from the facts and vital evidence, such as the import documentation and the letter dated 6 February 1996 of the sixth respondent, were overlooked and therefore were not given any weight. The first document that had YV2A4A2A0G08800017 as the number of the chassis, was the letter dated 6 February 1996 of the sixth respondent. That was the initial mistake by the sixth respondent and it was not picked up by the fifth respondent who had the duty under the Act to verify that all information was correct to the public at large. Therefore, that number was acted upon as truth. It was clear that the number in the certificate of registration was a mistake that emanated from the said letter of the sixth respondent (see paras 19 & 21).

(5) The appeal against the fifth and sixth respondents was allowed, with costs to the appellant. As for the apportionment of liability, the court assessed that as 2/3 against the fifth respondent and 1/3 against the sixth respondent. The sixth respondent, who provided the wrong particulars

was not blameless but the fifth respondent who has the duty to examine and inspect vehicles under the Act, bore the greater blame (see para 22).

[Bahasa Malaysia summary

Rayuan ini adalah terhadap keputusan hakim bijaksana yang telah menolak tuntutan perayu terhadap responden-responden pertama hingga keenam untuk, antara lain, deklarasi/perintah mandatori bahawa sijil pendaftaran kenderaan yang mempunyai nombor JDW 3301 ('kenderaan tersebut') dibetulkan untuk menunjukkan nombor cesi yang terdapat di badan kenderaaan, dan untuk ganti rugi am dan khas. Perayu telah membeli kenderaan tersebut daripada Metro Cosmos Express Tours & Transport Sdn Bhd. Responden kelima yang diberikan lessen untuk menjalankan ujian dan pemeriksaan kenderaan motor bagi pihak responden-responden pertama dan kedua untuk memeriksa JDW 3301 ('kenderaan tersebut') 14 kali. Bagi setiap kali tersebut, ulasan adalah sama ada 'lulus' atau 'passed'. Walau bagaimanapun pada 13 Mei 2002, responden kelima mendapati bahawa nombor cesi tersebut berbeza daripada yang dinyatakan pada sijil pendaftaran. Di Mahkamah Tinggi, responden menegaskan bahawa prosiding tersebut dimulakan melalui semakan kehakiman. Sebagai jawapan, perayu berhujah bahawa semakan kehakiman, yang bukan sebahagian daripada 'Isu-isu untuk dibicarakan' bukan merupakan prosedur yang eksklusif. Perayu selanjutnya menegaskan bahawa remedi-remedi adalah untuk perlindungan hak-hak persendirian dalam kedua-dua prosiding undang-undang persendirian atau awam. Tuntutan-tuntutan plaintif telah ditolak atas alasan-alasan ketidakpatuhan A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') dan bahawa cesi kenderaan tersebut telah digantikan sebelum pemeriksaan tersebut.

Diputuskan, membenarkan sebahagian daripada rayuan:

(1) Jika pertikaian mempunyai prinsip-prinsip undang-undang awam sahaja maka A 53 KMT merupakan prosedur yang sesuai. Tuntutan itu, yang berdasarkan pelanggaran kewajipan dan atau kecuaian, lebih berdasarkan kepada fakta. Dalam kes ini, ia bukan sahaja terhadap pihak berkuasa awam tetapi juga terhadap defendan ('responden kelima') yang diberikan lesen untuk menguji dan memeriksa kenderaan tersebut bagi pihak responden-responden pertama dan kedua, dan yang mendakwa kecuaian dalam menguji dan memeriksa kenderaan tersebut. Juga terdapat seorang lagi defendan ('responden keenam') yang bukan pihak berkuasa awam. Mahkamah berpendapat bahawa pertikaian tersebut tidak sesuai untuk semakan kehakiman. Permohonan-permohonan untuk deklarasi dan perintah mandatori tidak patut dibatalkan atas alasan ketidakpatuhan A 53 (lihat perenggan 7).

(2) Keseluruhan tuntutan terhadap responden-responden pertama dan kedua telah ditolak di bawah s 126(6) Akta Pengangkutan Jalan Raya 1987 ('Akta tersebut'). Responden-responden pertama dan kedua tidak

bertanggungjawab terhadap guaman untuk apa-apa kegagalan oleh responden kelima menjalankan tanggungjawabnya di bawah Akta tersebut. Berdasarkan s 126(6) Akta tersebut, mahkamah sebulat suara menolak rayuan terhadap responden-responden pertama dan kedua dengan kos terhadap perayu. Juga tiada kes terhadap responden-responden ketiga dan keempat (lihat perenggan 7–9).

(3) Kenderaan tersebut diimport dan semua dokumentasi import, terutamanya invois, bil muatan dan sijil asal mempunyai nombor cesi iaitu YV2F7A2A0GC880017, yang merupakan nombor yang didapati oleh DW5 pada tarikh yang dinyatakan. Semua dokumen mempunyai nombor cesi iaitu YV2F7A2A0GC880017. Nombor cesi itu apabila diperiksa pada 13 Mei 2012 adalah sama dengan dokumentasi import yang konsisten dengan fakta bahawa cesi itu apabila diperiksa pada 13 Mei 2012 merupakan cesi yang sama yang telah diimport. Ketiadaan bukti pengubahan telah disangkal bahawa cesi mungkin telah diganti sebelum pemeriksaan pada 13 Mei 2012 tersebut. Nombor cesi yang berbeza dengan nombor yang dinyatakan dalam sijil pendaftaran hanyalah merupakan kesilapan manusia (lihat perenggan 13–17).

(4) Inferens sewajarnya tidak dikemukakan daripada fakta dan keterangan penting, seperti dokumentasi import dan surat responden keenam yang bertarikh 6 Februari 1996, yang telah terlepas perhatian dan dengan itu tidak dianggap penting. Dokumen pertama yang mempunyai YV2F7A2A0GC880017 sebagai nombor cesinya adalah surat responden keenam yang bertarikh 6 Februari 1996. Itu adalah kesilapan oleh responden keenam dan ia tidak disedari oleh responden kelima yang mempunyai kewajipan di bawah Akta tersebut untuk mengesahkan bahawa semua maklumat kepada pihak awam adalah betul. Oleh itu, nombor tersebut digunapakai sebagai suatu yang benar. Adalah jelas bahawa nombor dalam sijil pendaftaran itu merupakan kesilapan yang timbul daripada surat responden keenam tersebut (lihat perenggan 19–21).

(5) Rayuan terhadap responden-responden kelima dan keenam adalah dibenarkan, dengan kos kepada perayu. Berhubung pembahagian liabiliti, mahkamah menaksirkan bahawa 2/3 terhadap responden kelima dan 1/3 terhadap responden keenam. Responden keenam, yang memberikan butiran salah tidak boleh dikatakan tidak bersalah langsung tetapi responden kelima yang mempunyai kewajipan untuk menguji dan memeriksa kenderaan di bawah Akta tersebut, mempunyai kebersalahan yang lebih tinggi (lihat perenggan 22).]

Notes

For a case on claim for compensation, see 11 *Mallal's Digest* (4th Ed, 2011 Reissue) para 21.

A For a case on whether application judicial review, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) para 4807.

Cases referred to

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian
B *Johor & Ors* [2010] 3 MLJ 145, FC (refd)
Blay v Pollard & Morris [1930] 1 KB 628 (refd)
China Airlines Ltd v Maltran Air Corp Sdn Bhd (formerly known as Maltan Air Services Corp Sdn Bhd) and another appeal [1996] 2 MLJ 157; [1996] 3 CLJ 163, FC (refd)
C *Dato' Seri Anwar Ibrahim v Tun Dr Mahathir bin Mohamad* [2011] 1 MLJ 145, FC (refd)
Haji Mohamed Dom v Sakiman [1956] MLJ 45, CA (refd)
Jerneh Insurance Corporation Sdn Bhd v Hai Heng Enterprise Sdn Bhd [2002] 4 MLJ 332, HC (refd)
D

Legislation referred to

Courts of Judicature Act 1964 Schedule, para 1
Road Transport Act 1987 s 126, 126(6)
Rules of the High Court 1980 O 2 r 1(1), (3), O 18 r 19(b), (d), O 53, O 53
E rr 1, 2

Wong Kim Fatt (KH Tan with him) (KH Tan & Co) for the appellant.
Iznan Ishak (Senior Federal Counsel, Attorney General's Chambers) for the first, second, third and fourth respondents.
Hairul Azam bin Hambali (Azam Lim & Pang) for the fifth respondent.
F *M Robert (Yae Seng Wai & Partners) for the sixth respondent.*

Jeffrey Tan JCA (delivering judgment of the court):

G **[1]** This is an appeal against the decision of the learned judge who dismissed the appellant's claim against the first to sixth respondents for, inter alia, a declaration and or a mandatory order that the registration certificate of vehicle bearing No JDW 3301 be rectified to reflect the number of chassis as appearing on the body of the vehicle, and for general and special damages. Basically, the
H claim for the declaration and the mandatory order was dismissed for non-compliance with O 53 while the claim for damages was dismissed on the ground 'that the chassis of the said vehicle was replaced prior to examination … on 13.5.2002'.

I **[2]** The background facts were as follows. JDW 3301 was imported by the sixth defendant/sixth respondent in early 1996. Sometime in 1998 (see p 167 of the appeal record), the plaintiff/appellant purchased JDW 3301 from Metro Cosmos Express Tours & Transport Sdn Bhd. The relevant certificate of registration of JDW 3301 had the following particulars:

No. enjin:	7D 71F 914 558 558
No. Chassis:	YV2A4A2A0G08800017
Buatan:	Volvo
Nama Model:	FL 7/34
Keupayaan Enjin:	6700 S.P
Tahun Dibuat:	1991
Tarikh Pendaftaran:	1.3.1996

[3] Since importation and or registration, JDW 3301 was inspected on no less than 14 occasions by the fifth defendant/fifth respondent, who was licensed by the Minister of Transport to conduct examinations and inspections of motor vehicles on behalf of the first and second defendants/first and second respondents, pursuant to s 126 of the Road Transport Act 1987 ('Act'). On each occasion that it was inspected by the fifth respondent, the remark was 'lulus' or 'passed'. But on 15 May 2002, the fifth respondent discovered that the number of the chassis was different from that of the certificate of registration. While the certificate of registration had it as YV2A4A2A0G08800017, the number on the chassis was YV2F7A2A0GC880017. JDW 3301 was examined by the Chemistry Department, who found that the number of the chassis (YV2F7A2A0GC880017) had not been tampered — 'Berdasarkan kepada pemeriksaan saya berpendapat bahawa nombor casis tersebut tidak terganggu (No Tampering)'.

[4] In para 17 of their defence (138AR), the first to fourth respondents averred that the reliefs sought by the appellant were contrary to O 53 of the Rules of the High Court 1980, in that leave had not been obtained for the commencement of the proceeding. But that pleading was just left by the wayside, not until after the entire case had closed and all oral evidence had been recorded and witnesses' statements had been filed. In their written submissions to the court below (491AR), the first to fourth respondents contended that the instant proceedings should have been brought by way of judicial review, while the appellant replied (see 523AR) that judicial review was not the exclusive procedure, that remedies for the protection of private rights could be given in both private or public law proceedings, and that 'judicial review' was not amongst the 'isu-isu untuk dibicarakan'.

[5] Enclosure 52, which was supposed to have been that 'isu-isu untuk dibicarakan' and so could settle the question as to whether 'judicial review' was an agreed issue, was not to be found in the appeal record. However, there was another document at hand that said that 'judicial review' was not an agreed issue. In their written submission (489AR) to the court below, where the first to fourth respondents had carefully listed out the agreed issues, 'judicial review' was not one of the agreed issues. Therefore, albeit that it was pleaded, it would

seem that the appellant was right that 'judicial review' was not an agreed issue. Be that as it may, it was held by the learned judge (55AR) that the 'isu-isu untuk dibicarakan' concerned issues of fact but that the non-compliance of O 53 was a matter of law which could 'be ventilated at the stage of submissions or at any stage of the proceedings', and that the appellant could not have been taken by surprise by 'judicial review' since it had been pleaded.

[6] A point of law may be raised at any stage of a proceeding, with or without notice (see *Dato' Seri Anwar Ibrahim v Tun Dr Mahathir bin Mohamad* [2011] 1 MLJ 145 per Arifin Zakaria CJ (Malaya), as he then was, at para 6). We wholly accept that O 53 governs 'all applications seeking the relief specified in para 1 of the Schedule to the Courts of Judicature Act 1964 and for the purposes therein specified' (O 53 r 1) and that 'an application for any of the reliefs specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of habeas corpus) shall be in Form 111A' (O 53 r 2). But O 53 has to do with the mode of application. The challenge to the procedure adopted by the appellant was not a point of law but a matter of procedure that ought to have been raised at the onset (see *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145, where the action was struck out under O 18 r 19(b) or (d) of the Rules of the High Court 1980) and not after the first to fourth respondents had allowed the claim to proceed in the mode of application as adopted by the appellant, and not after all evidence had been recorded and the entire case had closed. Had that issue been raised at the onset, it could have been different. The appellant could then have remedied the irregularity by an application to convert the proceeding to the mode of application as required by O 53. But to allow that issue to be raised at the close of the entire case, it denied the appellant all opportunity to remedy the mode of the proceeding. On the other hand, no injustice would be caused, had that issue been disallowed. All evidence had been recorded, and any insistence on the proper mode of the application at that late stage would not save any judicial time nor expedite the disposal of the action. Moreover, whatever failure to comply with O 53 was an irregularity (see O 2 r 1(1)), and O 2 r 1(3) provided that a proceeding should not be wholly set aside on the ground that the proceeding was required by the Rules to be begun by an originating process other than the one employed. Admittedly, para 17 of the defence averred that the mode of application should have been by way of judicial review. But given that the first to fourth respondents had participated in the proceeding without any objection whatsoever to the mode of the application, by filing a defence and by calling witnesses, which conduct was consistent with waiver and or abandonment of all procedural objections, it was just too late to contend that the mode of application was wrong. Trial had proceeded on the agreed issues. 'Judicial review', which was not an agreed issue, was outside the scope of the agreed issues upon which trial had commenced and so should not have been taken up for consideration (see *Jerneh Insurance Corporation Sdn Bhd v Hai Heng*

Enterprise Sdn Bhd [2002] 4 MLJ 332, where it was held by Richard Malanjum J, as he then was, that as the approach taken in the case was that there was no distinction as to whether the defendants were common carriers, private carriers and/or as bailees of the cargo, and that for the defendants to raise such an issue at the close of the trial was an 'ambush' upon the plaintiffs). The claim ought to have been decided on the issues on the record (see *Haji Mohamed Dom v Sakiman* [1956] MLJ 45 where Mathew CJ in the course of his judgment at p 45 said: 'Nowhere in the pleadings is it alleged that the agreement was in the nature of a document of loan, and the case never proceeded on that basis. In my view, once he had found that the agreement for sale was a genuine document, the learned trial judge had no alternative but to order specific performance of the agreement or to award damages. I think it is clear that a judge is bound to decide a case on the issues on the record and that if there are other questions they must be placed on the record, which in this case they were not, *Blay v Pollard & Morris* [1930] 1 KB 628 (at p 634)').

[7] But even if 'judicial review' could be taken up at that late stage, there ought to have been an appraisal, but there was none, of the public law elements involved. Only if a dispute has substantive principles of public law, is O 53 the appropriate procedure (see *Ahmad Jefri*). In fact, the claim, which was based on breach of duty and or negligence, was more fact based than anything else. 'If a matter is under private law, though concerning a public authority, it would be inappropriate to commence the action under Order 53 …' (see *Ahmad Jefri* per James Foong FCJ, delivering the judgment of the court). In the instant case, the claim was not only against public authorities. The claim was also against a defendant (the fifth respondent) who was licensed by the Minister of Transport to examine and inspect the said vehicle on behalf of the first and second respondents, and who was allegedly negligent in the examination and inspection of the said vehicle. There was also another defendant (the sixth respondent) who was not a public authority. Given all the foregoing, we do not perceive that the dispute was suitable for judicial review. The prayers for the declaration and the mandatory order should not have been struck out on the ground of non-compliance with O 53. We are however of the view that the entire claim against the first and second respondents should have been dismissed under s 126(6) of the Act, which read:

> The authorisation of any person under subsection (3) shall not render the Federal Government liable to any person in respect of any injury, damage or loss occasioned by the failure of the person authorised or licensed to carry out his obligations under the Act in respect of which charges, fees or levy are demanded, collected and retained.

[8] The first and second respondents were not liable to suit for any failure by the fifth respondent to carry out its obligations under the Act. On account of

s 126(6) of the Act, we unanimously dismiss this appeal against the first and second respondents with costs against the appellant.

[9] As for the appeal against the third and fourth respondents, it was conceded by Dr Wong Kim Fatt for the appellant that there was no case against the third respondent. By that, it was impliedly conceded that there was also no case against the fourth respondent, who could not obviously be held vicariously liable if the third respondent had no case to answer. In the light of that gracious concession, we unanimously dismissed this appeal against the third and fourth respondents with costs against the appellant.

[10] The claim for damages was dismissed on the ground 'that the chassis of the said vehicle was replaced prior to the examination conducted by DW5 on 13.5.2002' (67AR):

> In my view the discrepancy in the findings of DW5's examination and also the subsequent examinations both by the 5th Defendant and Jabatan Kimia with the previous 14 examinations and records appearing in the said vehicle Perakuan Pendaftaran JPJ K2, is a major discrepancy. If at all it exists all this while, it could have been spotted by the previous examiners. It makes no sense for none of them to have been able to spot the discrepancy much earlier if it really does exist. Consequently, the only irresistible inference is that the chassis of the said vehicle was replaced prior to the examination conducted by DW5 on 13.5.2002.

[11] It was by inference that it was so concluded that the chassis was replaced. That inference was essentially derived from the evidence that JDW 3301 was examined on 14 different occasions, and that the number of the chassis on each examination was YV2A4A2A0G08800017 (as in the certificate of registration). It was reasoned that if the number of the chassis was indeed all the while different from that on the certificate of registration, then that would have been spotted by at least one of those 14 examiners. In that all 14 examiners found that the number of the chassis tallied with the certificate of registration, it was further reasoned that the current number of the chassis could not have been there when the chassis was examined on those 14 occasions, and that the number of the chassis, when it was examined on those 14 occasions, must have been as stated in the certificate of registration. On that reasoning, it was deduced that the chassis must have been replaced before the examination of JDW 3301 on 13 May 2002. That deduction was not in discord with the finding of the Chemistry Department that the number (YV2F7A2A0GC880017) of the chassis had not been tampered — 'Berdasarkan kepada pemeriksaan saya berpendapat bahawa nombor casis tersebut tidak terganggu (No Tampering)'. The logic was that the number (YV2F7A2A0GC880017) was in the condition 'not tampered' because the chassis was different.

[12] But those deductions, that the number of the chassis when examined on those 14 occasions was YV2A4A2A0G08800017 (as in the certificate of registration) and that the chassis was replaced before the examination on 13 May 2002, could not be reconciled with the total body of evidence and or with the probabilities presented by the facts.

[13] JDW 3301 was an imported vehicle. All import documentation (428–430AR), namely invoice dated 13 November 1995, bill of lading dated 13 November 1995 and certificate of origin dated 16 November 1995, had the number of the chassis as YV2F7A2A0GC880017, which was the number found by DW5 on 13 May 2002 and by the Chemistry Department. But that import documentation, which was the primary proof of the number of the chassis, was totally overlooked. Because that was overlooked, it was not asked how it could be that the number of the chassis tallied with the import documentation, and how it could be that the appellant could replace the chassis, if indeed the appellant had done so, with another chassis but with a number that tallied with the import documentation. It was also not asked how it could be that the number found by DW5 was different from the import documentation, when all examination of the chassis did not reveal that the number of the chassis had been tampered. Those crucial questions, if they had been asked, would have produced a different result.

[14] The import documentation, which had to do with the importation of the vehicle, would have been handed over by the importer (the sixth respondent) to the third respondent. The appellant, who was a subsequent buyer, would not have had possession of the import documentation. In any event, there was no evidence that the import documentation was ever in the possession of the appellant. Hence, the appellant could not have known of the number of the chassis as stated in the import documentation. So, even if it were true that the appellant had replaced the chassis, it was not possible for the appellant to have been able to replace the chassis with a number that would tally with the import documentation. It could not have been that uncanny or that coincidental. If at all, the appellant could only have replaced the chassis with another chassis, but not with another chassis with a number that would tally with the import documentation.

[15] Still, for the sake of argument, let it be accepted that the chassis was replaced after the 14th examination. But to accept that the chassis was replaced after the 14th examination would mean that it would also have to be accepted that the chassis was immediately replaced after importation. All import documentation (428–430AR) had the number of the chassis as YV2F7A2A0GC880017. It was however the evidence from the fifth respondent, which was accepted by the learned judge, that the number of the chassis was YV2A4A2A0G08800017 on all 14 examinations. If that were so,

then the chassis would have been replaced even before the first examination. When it was imported, the number of the chassis was YV2F7A2A0GC880017. But if the number of the chassis was YV2A4A2A0G08800017 on all 14th examinations, then that would only mean that a different chassis was examined and or that the number was different when it was first examined on 13 February 1996. As said, all 14th examinations did not reveal that the number had been tampered. So, if the number of the chassis was indeed YV2A4A2A0G08800017 on those 14th examinations, then it would have to be that a different chassis was examined. But to accept that a different chassis was examined on those 14th occasions would also mean to accept the unacceptable, that the chassis had been replaced even before the first of those 14th examinations. As far as known, JDW 3301 was lawfully imported. Any replacement of the chassis before the first examination would affect customs clearance or even put an end to the importation and or registration of the vehicle. There was no plausible reason therefore for the chassis to be immediately replaced after importation. Reasonably, it would have been that the number of the chassis when examined on the first occasion was as stated in the import documentation.

[16] There is another compelling reason to say that the number of the chassis, when it was examined on those 14th occasions, could not have tallied with the certificate of registration. If the number of the chassis, when it was examined on those 14th occasions, was the number as stated in the certificate of registration, then there should be import documentation of a similar vehicle with the number of the chassis as YV2A4A2A0G08800017. But there was none. Rather, it was accepted that 428–430AR was the import documentation. Now given that it was not in dispute that 428–430AR was the import documentation and that there was no import documentation of a chassis with YV2A4A2A0G08800017 as the number, it should reasonably follow that the number of the chassis, when imported, was YV2F7A2A0GC880017. The plating certificate of the Department of Transport (293AR) which was endorsed by the sixth respondent and which certified that the particulars of the vehicle tallied with the import documentation (238AR) and the declaration of imported goods by the sixth respondent (291AR) all affirmed that the number of the chassis, when imported, ended with 880017. The certificate of insurance dated 13 November 1995 (431AR) and the invoice of the forwarding agent dated 14 December 1995 (432AR) also affirmed that the number of the chassis, when imported, ended with 880017. All documents supported that the number of the chassis, when imported, was YV2F7A2A0GC880017. On the evidence, it was clear that the number of the chassis, when imported, was YV2F7A2A0GC880017.

[17] That the number of the chassis when examined on 13 May 2002 tallied with the import documentation was wholly consistent with the fact that the chassis when examined on 13 May 2002 was the same chassis that was imported. The absence of evidence of tampering refuted that the chassis could have been replaced before examination on 13 May 2002. That the number of the chassis was different from the number stated in the certificate of registration was all down to human error.

[18] It was the finding of the learned judge that 'what was supplied to the JPJ either by the person who first registered the vehicle or by the Plaintiff or the 5th Defendant were correct all along until the examination of the vehicle on 13.5.2002' (62AR). But that finding could not, with respect, be further from the truth. The vehicle was registered on 1 March 1996, that is, after the first examination by the fifth respondent. By letter dated 6 February 1996 (294AR), that is, before registration of the said vehicle, the sixth respondent applied to the second respondent for the registration of the said vehicle in the name of Metro Cosmos Express Tours and Transport Sdn Bhd. But in that letter, the sixth respondent gave the number of the chassis as YV2A4A2A0G08800017, which was not the number of the chassis as stated in the plating certificate, in the import documentation or in the declaration of imported goods. In its offer of sale of the said vehicle (295AR) to Metro Cosmos Express Tours and Transport Sdn Bhd, the sixth respondent also gave the number of the chassis as YV2A4A2A0G08800017, which again was not the number of the chassis as stated in the plating certificate, in the import documentation or in the declaration of imported goods. Thereafter, that exact number then appeared in the certificate of registration, in the *perakuan pemeriksaan*, and in the documents that followed. But before registration of the said vehicle, the number of the chassis was always YV2F7A2A0GC880017. A different number first appeared in the application of the sixth respondent to register the said vehicle in the name of the Metro Cosmos Express Tours and Transport Sdn Bhd. The certificate of registration that soon followed had the number of the chassis as exactly the number provided by the sixth respondent in the letter dated 6 February 1996. That certificate of registration, although issued by the first and or second respondents, was based on the examination of the vehicle by the fifth respondent. As said, the chassis could not have been replaced before the first examination or before the examination on 13 May 2002. The number of the chassis, when imported, was YV2F7A2A0GC880017. If there was the importation of a chassis with any other number, the sixth respondent, as the importer, should be able to prove it. But all that was before the court, in terms of the import documentation, was 428–430AR, which had the number of the chassis as YV2F7A2A0GC880017.

[19] The first document that had YV2A4A2A0G08800017 as the number of the chassis was the aforesaid letter dated 6 February 1996 of the sixth respondent. That was the initial mistake by the sixth respondent, in the number of the chassis. And that mistake was not picked up by the fifth respondent who had the duty under the Act to verify that all information was correct to the public at large. Thereafter, that number was acted upon as truth. It was so clear that the number in the certificate of registration was a mistake that emanated from the letter dated 6 February 1996 of the sixth respondent.

[20] The acid test is this. Even locally manufactured vehicles have certificates of manufacture. A similar vehicle with the number of the chassis as YV2A4A2A0G08800017 should have import documentation. In the instant case, the certificate of registration alone could not stand as any primary proof that there was a chassis with the number YV2A4A2A0G08800017. And without the import documentation, it would not add up that there would have been a chassis with the number YV2A4A2A0G08800017 to have been examined by the fifth respondent.

[21] Of course, an appellate court should be slow to disturb the findings of fact by a lower court or the findings by a lower court which depended on the credibility of witnesses (see *China Airlines Ltd v Maltran Air Corp Sdn Bhd (formerly known as Maltan Air Services Corp Sdn Bhd) and another appeal* [1996] 2 MLJ 157; [1996] 3 CLJ 163). We have limited our review to the deductions of the lower court which depended to a large extent on a finding (the number of the chassis on all 14th examinations was YV2A4A2A0G08800017) that, on the evidence, was clearly wrong. And in our review, we find that proper inferences were not drawn from the facts and that vital evidence, such as the import documentation and the letter dated 6 February 1996 of the sixth respondent, were overlooked and therefore were not given any weight. We have to interfere to put things right.

[22] For reasons given hereinbefore, we unanimously allow this appeal against the fifth and sixth respondents, with costs to the appellant. As for the apportionment of liability, we assess that as 2/3 against the fifth respondent and 1/3 against the sixth respondent. The sixth respondent who provided the wrong particulars was not blameless. But the fifth respondent, had the duty to examine and inspect vehicles under the Act, must bear the greater blame, for the failure to detect the mistake at the point of registration of the said vehicle, for the failure to enter the correct particulars of the said vehicle, and for the

failure to carry out its obligations under the Act that caused foreseeable loss to the appellant. As for the quantum of damages, we direct that it be assessed by the court below.

Appeal allowed in part.

Reported by Ibnu Aswan